

REMARKS

Claims 1-22 are pending in this application. No changes have been made to the Claims. Applicants respectfully elect with traverse the examination of Group I, Claims 1-13, drawn to a bottom filling injection system. Reconsideration, withdrawal of the restriction requirement, and allowance of all remaining claims are respectfully requested.

ELECTION/RESTRICTIONS

The Examiner stated on pages 2-3 of the Office Action mailed on October 20, 2005:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, drawn to a bottom filling injection device, classified in class 99, subclass 450.8.
- II. Claims 14-18, drawn to a bottom filling injection system, classified in class 99, subclass 450.8.
- III. Claims 19-22, drawn to a method for filling a chambered food item, classified in class 426, subclass 391. . . .

Inventions I and II are unrelated. . . . In the instant case the different inventions have different modes of operation, wherein one requires the use of a conveyor for multiple food items.

Inventions III and I are related as process and apparatus for its practice. . . . In this case the apparatus as claimed can be used to practice another and materially different process, such as one which does not require the use of a conveyor.

Inventions III and II are related as process and apparatus for its practice. . . . In this case the apparatus as claimed can be used to practice another and materially different process, such as one which does not require using a holding apparatus.

Applicants respectfully traverse the restriction requirement but provisionally elect for examination **Group I, Claims 1-13**, drawn to a bottom filling injection system. Applicants kindly request that Examiner consider the following arguments in favor of withdrawing the restriction requirement so that all of Claims 1-22 might be examined together.

Regarding the inventions of Group I and Group II, Applicants note they do indeed disclose in their Specification that the inventions of Groups I and II are capable of use together.

For example, Applicants recite the basic elements of Group I on page 6, lines 1-5 of their Specification: “In accordance with one embodiment of the present invention, a multi-port bottom-filling injection device comprises a filling head having several spouts attached to a spout cap, a platen for holding a chambered food item, and a holding apparatus for securing the food item during filling.” In reference to the invention(s) claimed in Group II, the Applicants explain on page 19, lines 7-9 of their Specification: “In the preferred embodiment, several multi-port, bottom-filling injection devices in accordance with the present invention are incorporated into an automated filling system and are automatically operated.” The Applicants further describe the claim elements of Group II – such as a supply conveyor, a platen conveyor, at least one filling head, and others – and their role in the product filling process on pages 19-20: “The general filling process comprises the following cyclical steps: 1) a plurality of chambered food items is indexed (conveyed) downstream on a platen conveyor; 2) each food item is positioned directly over a filling head . . . 4) a filling head raises so that its spouts pass through the spout channels in the platen conveyor and pierce the bottom surface of the food item being filled; 5) filling is pumped into the pierced food item” Contrary to Examiner’s belief, Applicants therefore submit they did indeed disclose that the inventions of Groups I and II could be combined. However, as correctly stated by Examiner, Sections 806.04 and 808.01 of the MPEP direct that two inventions are “unrelated” only if it can be shown that: 1) they are not disclosed as capable of use together, AND 2) they have different modes of operation, different functions, or different effects. Therefore, even if it were true that Groups I and II have different modes of operation, Applicants have in fact disclosed that the invention of Group I can be used in invention of Group II. Applicants thus urge that Groups I and II are in fact related, and a search for, and examination of, the combination of the groups would not present an undue burden for the Examiner.

Moreover, MPEP Section 803 requirements for restriction between patentably distinct inventions have not been satisfied, the criteria for which follow: 1) the inventions must be independent or distinct as claimed; AND 2) there must be a serious burden on the examiner if restriction is required. Section 803 of the MPEP further states: "a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined." There is no evidence of separate status in the art or of a different field of search. In fact, Groups I and II are both identically classified in class 99, subclass 450.8. As explained in Section 904.02(a) of the MPEP, "a proper field of search normally includes the subclass in which the claimed subject matter of an application would be properly classified." Applicants thus believe there would be no undue burden for Groups I and II to be examined together. As stated in Section 803 of the MPEP, "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." For the sake of argument, even if Groups I and II were properly deemed independent and distinct, restriction still would not be proper where the search and examination would not be unduly burdensome. Applicants therefore request that the restriction between Group I and Group II claims be withdrawn.

Regarding the inventions of Groups III and I, MPEP Section 803 requirements for restriction between patentably distinct inventions have not been satisfied, the criteria for which follow: 1) the inventions must be independent or distinct as claimed; AND 2) there must be a serious burden on the examiner if restriction is required. Applicants submit that a search and examination of Groups I and III together would not pose an undue burden: a search for the food-filling method of Group III would necessarily also reveal references relating to the device of Group I. As can be seen by comparing the method steps of Claim 19 with the apparatus

elements of Claim 1, for example, practicing the method of Claim 19 would necessarily require the presence of the apparatus claimed in Claim 1. The elements of apparatus Claim 1 (or obvious variants thereof – for example, note that a platen conveyor would obviously comprise a plurality of platens) – i.e. filling head, platen, spouts, spout channels, and holding apparatus – also appear in method Claim 19. For reference, method Claim 19 requires:

- a) providing a chambered food item upon a platen conveyor, wherein the platen conveyor has a plurality of spout channels;
- b) indexing the chambered food item on the platen conveyor until the food item is positioned directly over a filling head having a plurality of spouts;
- c) positioning a holding apparatus about the chambered food item to secure the chambered food item;
- d) raising the filling head until the plurality of spouts passes through the plurality of spout channels and pierces the chambered food item;
- e) transferring filling through the filling head and into the chambered food item;
- f) lowering the filling head until its spouts are below the platen conveyor; and
- g) removing the holding apparatus from about the chambered food item.

As stated in Section 803 of the MPEP, “If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” For the sake of argument, even if Groups I and III were properly deemed independent and distinct, restriction still would not be proper where the search and examination would not be unduly burdensome. Applicants therefore request that the restriction between Group I and Group III claims be withdrawn.

Regarding the inventions of Groups III and II, MPEP Section 803 requirements for restriction between patentably distinct inventions have not been satisfied, the criteria for which follow: 1) the inventions must be independent or distinct as claimed; AND 2) there must be a serious burden on the examiner if restriction is required. Applicants believe there would be no undue burden for Groups II and III to be examined together. For example, the platen conveyor, filling head with spouts, and pumping system elements of Claim 14 (from Group II) would

necessarily be required to practice the method steps of Claim 19 (from Group III). The other elements in Claim 14, such as supply conveyor and filling container, would have been obvious additions and/or variations to the device that would be necessary to practice the method of Claim 19. As stated in Section 803 of the MPEP, "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." For the sake of argument, even if Groups II and III were properly deemed independent and distinct, restriction still would not be proper where the search and examination would not be unduly burdensome. Applicants therefore request that the restriction between Group II and Group III claims be withdrawn.

CONCLUSION

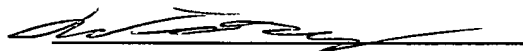
In light of the amendments and/or the arguments made by Applicants above, Applicants submit that all existing claims are now in a condition for allowance. Applicants respectfully request that Examiner withdraw all restrictions and rejections with regard to the above-referenced claims in reliance on one or more of the grounds submitted by Applicants.

If there are any outstanding issues that the Examiner feels may be resolved by way of telephone conference, the Examiner is invited to call Colin Cahoon or William Wang at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

The Commissioner is hereby authorized to charge any payments that may be due or credit any overpayments to CARSTENS & CAHOON, LLP Deposit Account 50-0392.

Respectfully submitted by:

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